UNITED STATES v. CECIL F. ROSS, JR.

IBLA 78-180 Decided April 3, 1979

Appeal from mining contest decision of Administrative Law Judge R. M. Steiner declaring null and void appellant's Fortuna placer mining claim. CA-3592.

Affirmed.

1. Mining Claims: Discovery: Generally

A placer mining claim is valid only where there has been discovered within the limits of the claim a valuable mineral deposit.

2. Mining Claims: Discovery: Generally

After the Government, through expert testimony of its mineral examiner, has made a prima facie showing that no discovery exists, the burden of going forward with a preponderance of evidence to the contrary falls upon contestees.

APPEARANCES: William E. Bonham, Esq., Folsom, California, for appellants;
Charles F. Lawrence, Esq., Office of the General Counsel, United States Department of Agriculture, San Francisco, California for appellee.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Cecil F. Ross, Jr., Cecil F. Ross III, and Peter B. Ross (contestees), appeal from a decision of Administrative Law Judge R. M. Steiner dated December 12, 1977, which found their Fortuna placer mining claim to be null and void due to the failure of contestees to introduce sufficient evidence of a discovery of a valuable mineral deposit to overcome the prima facie case of lack of discovery established by the Government. We have examined carefully contestees' objections on appeal, but we find no error in the decision below.

On appeal, contestees' attorney makes various generalized objections to the decision below. Taken in the order presented, counsel's objections appear as follows: (1) Henry Jones, the Government mineral examiner, was not qualified as an expert witness and failed to sample the stream bed of the claim, as would have been done by a "reasonable and prudent man"; (2) Mr. Jones failed to explain the meaning of the term "discovery points" to contestee Cecil Ross, Jr., and when Jones asked contestee to direct him in his sampling of the claim, Ross did not realize he could designate more than one point; (3) to deny validity of the claim would be a taking of property without due process; and (4) "the United States has failed to overcome the evidence that Mr. Ross has title to said land."

As the record shows, Mr. Henry Jones appeared on behalf of the Government and, after reciting his extensive credentials as a mining engineer, testified that he had examined the contested mining claim on August 18, 1975. Jones testified that he observed a sluice box and a partially collapsed adit which Mr. Ross identified as his discovery point. Jones took a three pan sample from a graveled portion of the bank surrounding the adit. Ross testified that, "Mr. Jones was willing to do what I asked * * *" and that, "he said any place that he would -- any place that I showed him, he was willing to take it" (Tr. 121). Jones subsequently concentrated the sample and had it assayed (Exh. 4). On the basis of these assay results, Jones calculated that the material sampled contained 6 cents worth of gold per cubic yard. Jones testified further that the bed of the creek which traverses the claim is devoid of gravel and that there was little gravel on either of the banks. Based on this examination, he concluded that a prudent man would not be justified in expending time, money, or effort on the claim with the expectation of developing the paying mine.

Cecil Ross, Jr., was the only witness for contestees.

[1] We note at the outset that Ross, who appears to be a man of impressive honesty, never claimed to have any intention of attempting to develop the Fortuna into a commercial mining operation. Ross described the efforts which he and his sons have made at placering gold on the Fortuna. The fact that no gold from the claim has ever been sold for profit does not suggest a discovery of commercially saleable quantities of gold. According to his posthearing affidavit, Ross has had several articles of jewelry (two rings and a pendant) made from gold which he recovered from the claims. In addition to the value of the jewelry, he estimates that he has recovered 2 ounces of "fine gold" and "two course nuggets."

Under the mining laws, a placer mining claim is valid only where a valuable mineral deposit has been discovered within the limits of the claim. A discovery exists only where minerals have been found in such quantities that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable

prospect of success in developing a valuable mine. United States v. Maley, 29 IBLA 201 (1977); United States v. Arcand, 23 IBLA 226 (1976). See also, Castle v. Womble, 19 L.D. 455, 457 (1894). This test, often known as the "prudent man" test, has been refined to require a showing that the mineral in question can be presently extracted, removed and marketed at a profit. United States v. Coleman, 390 U.S. 599 (1968); United States v. Vaux, 24 IBLA 289 (1976).

The Government, in a mineral contest, must meet the initial burden of going forward with a prima facie case showing that no discovery has been made. This burden is met when a Government mineral examiner samples a claim and gives his expert opinion that no discovery has been made. United States v. Hunt, 29 IBLA 86 (1977). In the case before us, the Government's prima facie case was established by Jones' testimony regarding his evaluation of the Fortuna claim.

[2] Where, as here, the Government had made its prima facie case of no discovery, the burden of going forward shifts to the contestees who must show, by a preponderance of the evidence, the existence of a discovery. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959); Maley, supra. In the case before us, contestees' evidence was confined to testimony by Cecil Ross, Jr., which contained no suggestion of a discovery in paying quantities within the test of Coleman, supra. On the basis of the record before us, we must conclude that no discovery exists on the Fortuna.

[3] Addressing the objections posed, supra, by counsel for the contestees, we find that: (1) no serious objection to the qualifications of the Government's expert witness has been made, either below or on appeal; (2) Jones was under no obligation to sample any specific portion of contestees' claim beyond contestees' workings 1/ and Ross was welcome to submit his own evidence of other deposits; (3) the record shows that the requirements of due process were fully observed; and (4) to the extent that appellants contend the land is not public land, appellants in effect admit that their 1973 location is invalid, since a mining claim may only be located on land in Federal ownership. Junior L. Dennis, 39 IBLA (1979). Thus, even were the Board to resolve the controversy over land ownership in appellants' favor, the result would be the same.

1/ Government mineral examiners are not required to sample beyond the claimant's workings on a claim, and are under no obligation to perform discovery work. United States v. Timm, 36 IBLA 316 (1978). Jones offered to sample any areas Ross would like and finally took his samples from the only workings visible on the claim.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Joseph W. Goss
Administrative Judge

We concur:

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James L. Burski
Administrative Judge

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Frederick Fishman
Administrative Judge